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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY *Q74*

DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GAMETEK LLC,

Plaintiff,

vs.

FACEBOOK, INC.; et al.,

Defendants.

CASE NO. 12-CV-501 BEN (RBB)

**ORDER:**

**(1) GRANTING MOTION TO  
DISMISS UNDER 25 U.S.C. § 299  
AND FEDERAL RULE OF CIVIL  
PROCEDURE 21 [Docket No. 97]**

**(2) DENYING AS MOOT JOINT  
MOTIONS TO SEVER CLAIMS  
AGAINST DEFENDANTS [Docket  
Nos. 124, 133]**

Presently before the Court is a Motion to Dismiss Under 35 U.S.C. § 299 and Federal Rule of Civil Procedure 21, filed by Defendants Cie Games, CrowdStar Inc., CrowdStar International Limited, CrowdStar Network, LLC (collectively, "CrowdStar"), Electronic Arts Inc. d/b/a EA Interactive d/b/a Playfish d/b/a Pogo Games ("EA"), Funzio, Inc., Funzio USA, Inc. (collectively, "Funzio"), Zynga Inc., and Digital Chocolate, Inc. (Docket No. 97.) In addition, Defendants 6Waves LLC, 6Waves Technologies, LLC, 6Waves US, Inc., Six Waves Inc. (collectively, "6Waves") (Docket No. 98) and RockYou, Inc. (Docket No. 99) joined the Motion to Dismiss.

In the Motion to Dismiss, Defendants sought to be dismissed for improper joinder under 35 U.S.C. § 299 and Rule 21. Under § 299(b), "accused infringers may not be joined in one action as defendants or counterclaim defendants, or have their actions consolidated for trial, based solely on allegations that they each have infringed the patent or patents in suit."

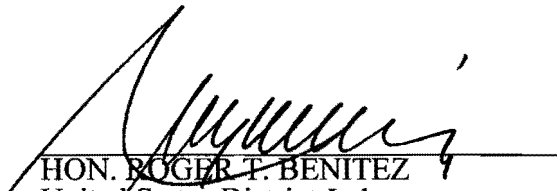
1 Plaintiff voluntarily dismissed Facebook, Inc., Facebook Operations, LLC, Facebook  
 2 Payments, Inc., and Facebook Services, Inc. (collectively, "Facebook") from this action. (Docket No.  
 3 119). Once Facebook had been dismissed, Plaintiff agreed that joinder of the Defendants was no  
 4 longer appropriate pursuant to § 299(b) or Rule 20. However, Plaintiff argued that the claims against  
 5 Cie Games, CrowdStar, EA, Funzio, Zynga, Digital Chocolate, 6Waves, and RockYou should be  
 6 severed into different cases, rather than dismissed from the action. Cie Games, CrowdStar, EA,  
 7 Funzio, Zynga, Digital Chocolate, and RockYou, along with Plaintiff, subsequently filed Joint Motions  
 8 to Sever Claims Against Defendants. (Docket Nos. 124, 133.) The parties agreed that the claims  
 9 against the Defendants should be severed from the action, and the Clerk of Court should open a new  
 10 case number for each of the Defendants.

11 "Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the  
 12 court may at any time, on just terms, add or drop a party. The court may also sever any claim against  
 13 a party." FED. R. CIV. P. 21; *see also Medsquire LLC v. Quest Diagnostics, Inc.*, No. 11-CV-04504,  
 14 2011 WL 7710203, at \*2 (C.D. Cal. Dec. 1, 2011). While a court has discretion to either dismiss  
 15 parties or sever claims, courts generally prefer dismissing parties over severing claims. *See, e.g.,*  
 16 *Innovus Prime, LLC v. LG Elecs., Inc.*, No. C 11-04223, 2012 U.S. Dist. LEXIS 6990, at \*11 (N.D.  
 17 Cal. Jan. 18, 2012) ("[C]ourts in the Northern District of California routinely dismiss defendants in  
 18 . . . patent cases involving misjoinder.").

19 Here, the Court finds it proper to dismiss Defendants Cie Games, CrowdStar, EA, Funzio,  
 20 Zynga, Digital Chocolate, 6Waves, and RockYou, rather than sever the claims against them.  
 21 Accordingly, the Motion to Dismiss is **GRANTED**. Cie Games, CrowdStar, EA, Funzio, Zynga,  
 22 Digital Chocolate, 6Waves, and RockYou are **DISMISSED**. Should Plaintiff choose to pursue its  
 23 claims against these Defendants, it may do so in separately filed actions as required by § 299. In  
 24 addition, the Joint Motions to Sever Claims Against Defendants are **DENIED AS MOOT**.

25 **IT IS SO ORDERED.**

26  
 27 DATED: December 7, 2012

28  
  
 HON. ROGER T. BENITEZ  
 United States District Judge